

Exchange/NFA	1995 Fee
New York Cotton Exchange	53,205.10
Kansas City Board of Trade	10,545.54
New York Futures Exchange	43,908.68
Minneapolis Grain Exchange	14,786.57
Philadelphia Board of Trade	1,857.41
Amex Commodity Corporation	587.45
National Futures Association	278,187.94
Total	\$1,136,390.33

As in the calculation of fees in previous years, the fiscal 1995 fee for the Chicago Board of Trade includes the MidAmerica Commodity Exchange.

V. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601 *et seq.*, requires agencies to consider the impact of rules on small businesses. The fees implemented in this release affect contract markets (also referred to as "exchanges") and registered futures associations. The Commission has previously determined that contract markets are not "small entities" for purposes of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, 47 FR 18618 (April 30, 1982). Registered futures associations also are not considered "small entities" by the Commission. Therefore, the requirements of the Regulatory Flexibility Act do not apply to contract markets or registered futures associations. Accordingly, the Chairman, on behalf of the Commission, certifies that the fees implemented herein do not have a significant economic impact on a substantial number of small entities.

Issued in Washington, DC., on May 9, 1995, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 95-11990 Filed 5-15-95; 8:45 am]

BILLING CODE 6351-01-P

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 247

RIN 1510-AA44

Regulations Governing FedSelect Checks

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Final rule.

SUMMARY: The Financial Management Service, U.S. Department of the Treasury, is issuing a final rule to govern FedSelect checks, a new

payment instrument for use by Federal agencies in paying Federal obligations. This final rule sets forth procedural instructions for using FedSelect checks, and defines the rights and liabilities of the Federal Government, Federal Reserve Banks, and banks in connection with FedSelect checks.

EFFECTIVE DATE: June 15, 1995.

FOR FURTHER INFORMATION CONTACT: Gary Garner, Program Analyst, Cash Management Policy and Planning, 202-874-6751; or Brad Ipema, Principal Attorney, 202-874-6680.

SUPPLEMENTARY INFORMATION: This portion of the preamble discusses the basis and purpose of 31 CFR part 247. It also responds to comments on the Financial Management Service's (FMS) notice of proposed rulemaking (NPRM) on this subject issued October 21, 1994 (59 FR 53125). A notice to extend the comment period for the notice of proposed rulemaking to December 21, 1994 was issued November 28, 1994 (59 FR 60739).

The FMS currently offers Federal agencies two payment mechanisms for paying Federal obligations. A Federal agency may either request the issuance of a Treasury check or the initiation of an electronic funds transfer. However, the FMS is making available to Federal agencies a third payment option called FedSelect, a new check instrument to be used with imprest fund transactions and other "on-demand" payment needs. The preferred method of payment is electronic. However, FedSelect is the FMS's response to customer needs for a new paper instrument and is to be used only when checks are deemed appropriate and consistent with FMS policy as contained in 31 CFR part 206.

General Comments and Responses on the NPRM

The Department received eight written comments on the NPRM from Federal agency officials and the financial community. One organization expressed concern that the Government proposes direct competition to the current third party draft industry. The Report of the National Performance Review (NPR), September 1993, FM08,

stated that since third party drafts are like checks, agencies essentially pay someone else to have a bank account for them. It was recommended that the Secretary of the Treasury eliminate the use of third party drafts and allow the use of commercial checking accounts. FedSelect grew out of this NPR recommendation, with an FMS desire to offer an alternative to third party drafts and improve customer services.

Several questions were raised regarding the operation of FedSelect. One organization and one bank wanted to know whether existing Federal Reserve bank routing numbers will be utilized on FedSelect checks. FedSelect checks will be drawn on the Federal Reserve Bank of Chicago and will bear that Reserve Bank routing number.

One organization requested identification of the types of transactions for which FedSelect checks will be used. FedSelect checks potentially may be used to pay all Government financial obligations; e.g., benefit and vendor payments.

Two organizations wanted to know how many FedSelect checks will be issued for each type of payment. It is undetermined at this time how many checks will be issued for each type of payment.

One organization requested to know the types of persons and entities that will be payees of such instrument. All types of persons and entities doing business with the Government will be payees of such instrument.

One organization wanted to know the start-up date of FedSelect. The start-up date for FedSelect will be July through October 1995.

Two organizations requested that the FMS provide banks with sample FedSelect checks so that their personnel can become familiar with them. It will be recommended that area banks be provided sample FedSelect checks by Federal agencies utilizing FedSelect checks in their respective locale. This will allow bank personnel to become familiar with the FedSelect checks.

Several organizations requested that the FMS describe plans to prevent fraud losses due to counterfeiting, forgery and

alterations. FedSelect checks will be fraud-evident checks with built-in security features such as:

- Chemical-sensitive paper that reveals attempts to alter checks with solvents and ink eradicators.
- Watermark paper that is visible when held to a light source, and impossible to reproduce with a photocopier or scanner.
- Micro-print signature line: Tiny type, visible when viewed through a magnifying glass, which appears as a dotted line when reproduced.

One organization recommended that the FMS initiate a nationwide educational program to lessen the potential for confusion and facilitate acceptance of FedSelect checks by banks. It will be recommended that area banks be provided sample FedSelect checks by Federal agencies utilizing FedSelect checks in their respective locale. This will allow bank personnel to become familiar with FedSelect checks. A nationwide educational program will not be provided at this time.

One organization suggested that the FMS establish a FedSelect "hotline" to address banker concerns and/or questions regarding FedSelect checks. A dedicated telephone number is provided on the face of each FedSelect check to facilitate verification of FedSelect checks.

One organization recommended that a \$5,000 standard dollar limit be placed on FedSelect checks to minimize potential losses to banks, and that the amount should be preprinted on the FedSelect check. FedSelect checks will have a dollar limit of \$10,000, which will be preprinted on the FedSelect check. Federal agencies can request waivers for higher amounts if their circumstances justify an increase above the \$10,000 limit.

Section-by-Section Comments and Responses

Section 247.2

One organization requested changes in the language of this section for purposes of clarity.

The words "these regulations" in § 247.2 are changed to "this Part" and other words are added for clarity. In addition, FedSelect checks will not be governed by the Uniform Commercial Code (UCC), as drafted by the National Conference of Commissioners on Uniform State Laws, but will be governed by the UCC, as adopted by Illinois, and as amended from time to time.

Section 247.3

One organization recommended that the term "bank" be used, as defined in Regulation J of the Federal Reserve System, 12 CFR 210.2(b), instead of "depository institution" in order to achieve consistency with the commercial law governing checks, (Regulation CC of the Federal Reserve System, 12 CFR part 229; Regulation J of the Federal Reserve System, 12 CFR part 210 and the UCC). The term "bank" is now used instead of "depository institution." However, "bank" is defined as it is defined in Regulation CC of the Federal Reserve System, 12 CFR 229.2(e).

In the definition of Reserve Bank, the phrase "or any branch of a Federal Reserve Bank" was deleted and language was added clarifying that "Reserve Bank" is limited to one of the twelve Reserve Banks in order to conform with the manner of presentment identified in Regulation CC, 12 CFR 229.36(b). Accordingly, FedSelect checks will not be considered presented to the paying bank until they are presented to the paying bank identified by the routing number placed on the FedSelect check, which is currently the Federal Reserve Bank of Chicago.

Section 247.4

One organization raised a concern regarding the clarity of the relationship between the FMS and the Federal Reserve bank upon which FedSelect checks are drawn. As referenced in § 247.4, the FMS has established a Memorandum of Understanding (MOU) between the Federal Reserve Bank of Chicago (Reserve Bank) and the FMS which further establishes the role and functions of the payor Reserve Bank on FedSelect checks. Treasury Financial Manual, Volume II, Part 8, Chapter 5000, entitled "Payment And Processing of FedSelect Checks By Federal Reserve Banks" will not be issued as the above referenced MOU provides sufficient detail. Therefore, reference to that Treasury Financial Manual chapter is deleted.

One organization suggested replacing the word "settle" in § 247.4(b) with the word "pay" for clarity and consistency with Regulation J of the Federal Reserve System, 12 CFR 210.9. After review of the cited law, the FMS agrees that the word "settle" more accurately describes the role of the paying bank. Therefore, changes were made to § 247.4(b) which clarify that the Reserve Bank settles for items, reserving the right to return the item, after which payment becomes final.

One organization recommended that language be inserted stating that Federal Reserve banks shall not be expected to cash FedSelect checks presented directly to them by the general public. The FMS believes that this subject is sufficiently covered under § 247.8(a), which provides for the presentment of FedSelect checks through normal banking channels.

Section 247.6

One organization questioned the purpose of the "warranty" provision in § 247.6(b). The warranty language in § 247.6(b) was derived from Regulation J of the Federal Reserve System, 12 CFR 210.5, under which banks warrant good title to an item and warrant that the item has not been materially altered. Specifically, however, the FMS inserted the warranty language in § 247.6, which is addressed to "Banks" in order to make clear that banks handling FedSelect checks do so in accordance with commercial law (the UCC, Regulation J of the Federal Reserve System and Regulation CC of the Federal Reserve System) as opposed to the rules governing standard Treasury checks (i.e., 31 CFR part 240). Therefore, the warranty language was not taken out. However, reference to the UCC was removed. As a result, by handling FedSelect checks, a bank agrees to the provisions of "this Part," which, in accordance with § 247.2, makes clear that FedSelect checks are governed by the UCC, Regulation J of the Federal Reserve System and Regulation CC of the Federal Reserve System.

Section 247.8

In reference to the limited payability provisions of § 247.8, one bank stated that banks will be exposed to greater liability for losses because banks will invariably accept for deposit checks that are "stale" (negotiated more than the number of days stated on the face of the FedSelect check) and for which they will not receive payment from the Government. The bank stated further that the practice will inconvenience the bank's customers as they will have to petition the Government for reissuance of the check, and the bank will bear the loss where the bank's customer withdraws the proceeds of the check immediately and disappears. One organization stated that it understood the payability of an item to be determined based on the date of deposit in the bank of first presentment (depository bank), not the date the check is presented to the payor Reserve Bank.

In general, the exposure of banks to liability for losses in connection with FedSelect checks is no greater than a

bank's current liability for losses in connection with third party drafts in use today by Federal agencies. In addition, the FMS has decided to limit the payability of all FedSelect checks to 90 days.

At the request of one organization, words in 31 CFR 247.8(d) were changed as follows: "refuse to pay" was changed to "return unpaid"; "presented to" was changed to "negotiated to"; and "bank of first presentment" was changed to "depository bank." Therefore, the Reserve Bank generally will return unpaid a FedSelect check negotiated to the depository bank more than 90 days after it was issued. The periods of payability written on the face of FedSelect checks are instructions to the Government to return those checks unpaid, if it so determines. The FMS, after contacting the Federal agency that issued the FedSelect check, may pay the check even though it was negotiated to the depository bank after the period of payability. Therefore, not all "stale" FedSelect checks will be returned to the depository bank. This procedure is very similar to the manner in which banks may treat checks more than six months old under the UCC. Section 4-404 of the UCC provides that a bank is under no obligation to pay a check more than six months old. However, as discussed in the UCC commentary following § 4-404, the bank may, after contacting the drawer, decide to pay the item.

Regarding the bank's increased risk of loss because a customer might withdraw funds and disappear immediately after a "stale" FedSelect check is negotiated, but just before the Reserve Bank has returned the check, the return of the "stale" FedSelect check is no different than that of the return of a standard commercial check; all returns must comply with the midnight deadline in the UCC, § 4-301, and Regulation CC of the Federal Reserve System, 12 CFR 229.30, 229.31.

In addition, where depository institutions face this risk of doing business, Regulation CC of the Federal Reserve System, 12 CFR 229.10(c)(1)(iii)(A) makes clear that in order for the requirement of next day availability to be applied, the check must be deposited in person by the payee to an employee of the depository bank, thereby affording the depository bank an opportunity to review the FedSelect check for "staleness." Regulation CC of the Federal Reserve System, 12 CFR 229.13(e), provides that the depository bank may delay next day availability when there is reasonable cause to doubt collectibility. Furthermore, as made clear in Regulation CC of the Federal Reserve

System, 12 CFR 229.19(c)(2)(ii), as well as the official commentary following that provision, the depository bank's credit to its customer may be provisional; the depository bank may charge back against the customer's account. Section 4-212(1) of the UCC would govern the depository bank's right of recovery of the provisional credit.

The FMS is of the opinion that the words "more than the number of days" in the second sentence of § 247.8(d), which is in reference to the manner of determining stale-dated items, is sufficiently clear. Nonetheless, the words "after the date on which the FedSelect check was issued" are added in order to further clarify that FedSelect checks generally will be returned unpaid if they are negotiated to a depository bank more than the number of days stated on the face of the check after the date the check was issued (more than 90 days after the date on which the check was issued).

One organization stated that noncash items were no longer handled by Federal Reserve banks. In response, the third sentence of § 247.8(d) was changed to state that stale FedSelect checks should be marked "void" on the face of the check and sent to the issuing agency or the FMS.

Section 247.9

Comments were received from several organizations regarding the warranty provisions in § 247.9, stating that the warranty provisions unfairly shifted the burden of loss to banks.

The warranty provisions of § 247.9 were drafted in an attempt to provide additional protection for public funds. However, after reviewing the comments arguing that such provisions are unnecessary, unfair to banks and inconsistent with commercial law (the UCC, Regulation J of the Federal Reserve System and Regulation CC of the Federal Reserve System), the FMS has decided to delete this section.

Section 247.10 (Now Section 247.9)

Two banks expressed a concern that a bank will not learn that a FedSelect check with a stop payment order placed against it is being returned until two to four days after the funds deposited must be made available to the customer under Regulation CC of the Federal Reserve System, thereby placing the depository bank at significant risk. The banks argued that the depository bank is at risk of losing the funds which must be made available by the next day if the Reserve Bank returns a "stopped" FedSelect check.

The FedSelect proposed rule states that Federal agencies are to request stop payment orders when the agency has notice that a FedSelect check has not been received by the payee, or that a FedSelect check is lost, stolen or destroyed. Stop payment orders protect both the Government and the payee from loss. In addition, early detection of potential fraud protects banks from loss.

As discussed under § 247.8 above, while Regulation CC of the Federal Reserve System requires next day availability for certain checks, 12 CFR 229.10(c)(1)(iii)(A) makes clear that the check must be deposited in person by the payee to an employee of the depository bank, thereby affording the depository bank an opportunity to review the FedSelect check. In addition, Regulation CC, 12 CFR 229.33(a), requires that the paying bank provide notice of return to the depository bank for items of \$2,500 or more. If the depository bank is concerned about potential loss, it can call the number stated on the face of the FedSelect check. If the depository bank receives an indication from the Reserve Bank or the FMS that a stop payment order might be placed against a FedSelect check, the depository bank may delay next day availability because there is reasonable cause to doubt collectibility under 12 CFR 229.13(e). In addition, as made clear in Regulation CC of the Federal Reserve System, 12 CFR 229.19(c)(2)(ii), as well as the official commentary to that provision, the depository bank's credit to its customer may be provisional; the depository bank may charge back against the customer's account if a check is returned by reason of a stop payment order. Section 4-212(1) of the UCC continues to govern the depository bank's right of recovery of a provisional credit against the customer.

The word "replacement" has been deleted from the title of § 247.9 in order to avoid confusion; while agencies may issue another FedSelect check or other form of payment to fulfill an obligation, no "replacement" FedSelect checks will be issued.

Per the recommendation of one organization, the FMS changed the words "refuses payment on" in the first sentence of § 247.9(c) to "returns unpaid" in order to conform with terminology in Regulation J of the Federal Reserve System, 12 CFR 210.9, and Regulation CC of the Federal Reserve System, 12 CFR 229.30, which discuss the return of unpaid items. In addition, the reference to "§ 247.8(c)" in the first sentence of § 247.9(c) was changed to § 247.8(d).

One organization was confused regarding the intention of the second sentence of § 247.10(d). The second sentence of § 247.10(d) was drafted with the intention of clarifying for Federal agencies using the services of FedSelect that any obligations for payment are the responsibility of the issuing agency, not the FMS. Therefore, claims by payees for any continuing obligations should be addressed to the agency that issued the FedSelect check that was subsequently lost, stolen or altered.

Section 247.11 (now Section 247.10)

One bank expressed a concern that this section does not sufficiently detail the circumstances under which the Government would be liable for fraud claims. While the FMS believes that sufficient detail is provided, the purpose of this section is to allocate accountability between the FMS and the issuing agencies.

Section 247.12 (now Section 247.11)

In response to a comment by an organization, currently the Reserve Bank will not be involved in demanding refunds from presenting banks or other debtors. However, contrary to the understanding of the organization, the opportunity for the Reserve Bank to be involved in such collection efforts is not precluded by § 247.11(b).

Rulemaking Analysis

It has been determined that this regulation is not a significant regulatory action as defined in E.O. 12866. Therefore, a regulatory assessment is not required. It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. A regulatory flexibility analysis is not required. It is anticipated that FedSelect checks will not negatively affect a substantial number of small entities because of the relatively low volume of checks to be issued in comparison to the use of other payment mechanisms by Federal agencies.

List of Subjects in 31 CFR Part 247

Banks, Banking, Checks, Federal Reserve System.

Authority and Issuance

For the reasons set out in the preamble, title 31, part 247 of the Code of Federal Regulations is added to read as follows:

PART 247—REGULATIONS GOVERNING FEDSELECT CHECKS

- Sec.
247.1 Applicability.
247.2 Governing law.

- 247.3 Definitions.
247.4 Federal Reserve Banks.
247.5 Federal agencies and termination of services.
247.6 Banks.
247.7 Certification and internal agency control.
247.8 Presentment.
247.9 Notice, non-receipt, theft, loss or destruction; late presentment.
247.10 Losses and accountability.
247.11 Debt collection.
247.12 Funds for losses.
247.13 Additional requirements.
247.14 Waiver of regulations.
247.15 Supplements, amendments or revisions.

Authority: 31 U.S.C. 3321, 3325 and 3327; 12 U.S.C. 391.

§ 247.1 Applicability.

The regulations in this part prescribe the rights and liabilities of the United States, the Federal Reserve Banks, banks, and others on FedSelect checks. These regulations apply to FedSelect checks issued on behalf of the United States for payments in connection with United States obligations. FedSelect checks are issued by Federal agencies on Federal Reserve Bank check stock. FedSelect checks are drawn on the payor Federal Reserve Bank in its banking capacity. The drawer of a FedSelect check is the United States; the drawee is a Federal Reserve Bank. Therefore, a FedSelect check shall not be deemed to be drawn on the United States nor shall the Federal Reserve Bank be deemed its drawer.

§ 247.2 Governing law.

Except as otherwise provided by statute or this Part, the regulations governing checks drawn on the United States or on designated depositories of the United States (e.g., 31 CFR parts 235, 240, 245, and 248) are inapplicable to FedSelect checks. As to definitions and other matters not specifically covered in this part, FedSelect checks are governed by Regulation J of the Board of Governors of the Federal Reserve System, 12 CFR part 210 ("Regulation J"), Regulation CC of the Board of Governors of the Federal Reserve System, 12 CFR part 229 ("Regulation CC"), and to the extent not otherwise inconsistent with this part, with Regulation J, and with Regulation CC, FedSelect checks will be governed by the Uniform Commercial Code, as adopted by Illinois ("UCC"), as all three may from time to time be revised. Such matters include, but are not limited to, rules regarding general presentment and transfer warranties, indorsement, and final payment.

§ 247.3 Definitions.

For the purpose of this Part:

Agency means a department, agency, or instrumentality in the executive branch of the United States Government.

Bank means an entity described in Regulation CC of the Federal Reserve System, 12 CFR 229.2(e), as may be amended from time to time.

Department means the United States Department of the Treasury.

FedSelect check means a check drawn upon a Reserve Bank with the designation "FedSelect" printed on the check.

Payee means the person to whom a FedSelect check is payable.

Payor Reserve Bank means the Reserve Bank on which a FedSelect check is drawn.

Presenting bank means a bank which sends a FedSelect check directly to a Reserve Bank for payment or collection.

Reserve Bank or *Federal Reserve Bank* means any one of the twelve Federal Reserve Banks.

§ 247.4 Federal Reserve Banks.

(a) Where FedSelect checks are issued on Reserve Bank check stock and drawn on the payor Reserve Bank in its banking capacity, the payor Reserve Bank shall perform certain functions as fiscal agent of the United States in the issuing, processing and final payment of FedSelect checks. A payor Reserve Bank shall act as fiscal agent of the United States on FedSelect checks only when authorized to do so by a Memorandum of Understanding between the Financial Management Service, U.S. Department of the Treasury (FMS), and the payor Reserve Bank.

(b) As authorized by a Memorandum of Understanding between a payor Reserve Bank and the FMS and in accordance with this part, the payor Reserve Bank shall settle with a presenting bank for the amount specified in a FedSelect check upon presentment of the FedSelect check through normal banking channels. Each payor Reserve Bank may issue operating circulars, letters or bulletins not inconsistent with this part governing details of its handling of payments under this part.

§ 247.5 Federal agencies and termination of services.

(a) Agencies may issue FedSelect checks in payment for United States obligations.

(b) Issuance of a FedSelect check by an agency in payment of an obligation shall constitute an agreement between the issuing agency and the FMS. The issuing agency shall adhere to the terms of the agreement, including those relating to fees for services provided by

the FMS, as expressed in this part and in the Treasury Financial Manual, Volume I, Part 4, Chapter 3500 (1 TFM 4-3500), entitled "Issuance Of FedSelect Checks By Federal Agencies."

(c) In addition to the provisions of this part, agencies issuing FedSelect checks shall adhere to instructions, contained in 1 TFM 4-3500, regarding items such as procedures for opening and closing FedSelect accounts with the FMS, procedures for the adjustment of agency FedSelect accounts where losses are the responsibility of the agency, procedures for the adjustment of agency FedSelect accounts in cases of termination of FedSelect services by the FMS, and performance requirements in the issuance of FedSelect checks.

(d) When an agency fails to adhere to the provisions of this part or to the instructions contained in 1 TFM 4-3500, the FMS, at its discretion, may terminate the services of FedSelect checks. The FMS shall provide the agency with prior notification of the date on which services will be terminated.

§ 247.6 Banks.

(a) A bank's acceptance of a FedSelect check issued pursuant to this part shall constitute its agreement to the provisions of this part.

(b) Each bank by its action of handling a FedSelect check shall be deemed to warrant to the Federal Government that it has handled the FedSelect check in accordance with the requirements of this part.

§ 247.7 Certification and internal agency control.

(a) A FedSelect check is not a check drawn on the United States Treasury. However, where the drawer of a FedSelect check is the United States, the requirements and procedures for disbursing and certifying activities under 31 U.S.C. 3321, 3527 and 3528 apply to agency accountable officers issuing FedSelect checks.

(b) FedSelect checks shall be drawn by an individual who is duly authorized by the agency, and shall be certified by a certifying officer.

(c) When an agency issues a FedSelect check in payment of a United States obligation, such agency certifies the issuance of the payment contemporaneous to the issuance of the FedSelect check. Therefore, where FedSelect checks are issued through an automated system, certification occurs through the on-line data transfer between the agency issuing a FedSelect check and the FMS.

(d) Agencies shall ensure that there are proper internal controls over the

issuance of FedSelect checks, including payment authorization, check issuance, and reconciliations. Payment authorization is the process by which vouchers or invoices are approved for payment by individuals designated to do so by the head of the agency, or their designees. Check issuance is the physical issuance of a FedSelect check in payment of a duly approved voucher or invoice. Reconciliation is the process by which amounts authorized for payment are verified against amounts of checks issued.

§ 247.8 Presentment.

(a) Presentment of FedSelect checks must be made to the payor Reserve Bank. FedSelect checks must be presented through normal banking channels.

(b) FedSelect checks will have a standard period of payability of 90 days.

(c) FedSelect checks shall bear a pre-printed legend, "Void After 90 Days."

(d) When an outstanding FedSelect check reaches its stale-date, a cancellation indicator will be placed against it and its status reflected as cancelled due to stale-dating. A payor Reserve Bank will return unpaid a FedSelect check negotiated to the depository bank more than the number of days stated on the FedSelect check after the date on which the FedSelect check was issued. A FedSelect check which has reached its stale-date before being negotiated to a depository bank should be marked "void" on the face of the check and sent to the issuing agency or the FMS. The issuance of another FedSelect check or other form of payment, to replace a lost, stolen, or destroyed FedSelect check must be made in accordance with § 247.9.

§ 247.9 Notice, non-receipt, theft, loss or destruction; late presentment.

(a) If an agency has notice that a FedSelect check is not received by the payee within a reasonable time after a payment is due, or that a FedSelect check is lost, stolen or destroyed, the agency must request to the FMS that a stop payment order be placed on that item. The notice may be given by telephone or facsimile, but if it is given by telephone, such notice must be confirmed in writing before another payment is issued. The notification must contain sufficient information to identify the account and/or the obligation to which the payment is related. Payment on a FedSelect check is stopped if the notice of non-receipt, loss, theft, or destruction is received from the agency at such time and in such manner as to afford the payor Reserve Bank and the FMS a reasonable

opportunity to act on it prior to final payment, as provided by applicable law. Once a stop payment order has been placed against an outstanding FedSelect check, such stop payment order will not be removed.

(b) The agency that issued the FedSelect check will issue another FedSelect check to replace a lost, stolen or destroyed FedSelect check, or other form of payment, at its discretion. Items an agency may require before issuing another FedSelect check include:

(1) Written confirmation that the original FedSelect check was lost, stolen, or destroyed;

(2) Confirmation from the FMS that the original FedSelect check is unpaid;

(3) A determination that recovery of the original FedSelect check is unlikely; and

(4) An indemnification agreement executed by the payee and/or indorsee.

(c) If a payor Reserve Bank returns unpaid a FedSelect check solely as a result of § 247.8(d), the agency that issued the original FedSelect check may issue, at its discretion, another FedSelect check, or other form of payment, to a payee or holder upon surrender of the original FedSelect check and execution of such indemnification agreement as may be required by the agency.

(d) Upon verification of the existence of a forged or unauthorized indorsement on a FedSelect check which has been finally paid, the agency that issued the original FedSelect check may issue, at its discretion, another FedSelect check or other form of payment to the person entitled. Disputes as to any continuing obligations for payment remain between the agency that issued the payment and the payee. Prior to the issuance of another FedSelect check, the payee or indorsee of the original FedSelect check may be required to execute an affidavit asserting that the payee or indorsee was in no way involved in the fraudulent or unauthorized indorsement of the original FedSelect check, in addition to any indemnification agreement required by the agency.

(e) In the case of a FedSelect check payable to the order of two or more persons, the requirements of this section apply to all designated payees.

§ 247.10 Losses and accountability.

(a) Agencies will be accountable for all losses arising out of agency activity related to the issuance of FedSelect checks. Such activities include negligence, fraud perpetrated by an employee or agent of the agency, and fraud perpetrated by a service-provider or vendor receiving a FedSelect check as payment.

(b) If an agency had notice that a FedSelect check was not received by the payee within a reasonable time after a payment is due, or that a FedSelect check is lost, stolen or destroyed, and the agency failed to request to the FMS that a stop payment order be placed on that item pursuant to § 247.9(a), the agency will be accountable for any loss occurring as a result of the failure to request stop payment in a timely fashion.

(c) Losses caused by the fault or negligence of the FMS will be the accountability of the FMS. Such losses include failure to adhere to a request by an agency to place a stop payment order on an item in accordance with § 247.9(a).

(d) The FMS will be accountable for losses caused by third-parties, including losses caused by alteration, counterfeit and forgery of the payee indorsement, unless such losses occur as described in paragraphs (a) and (b) of this section.

§ 247.11 Debt collection.

(a) Agencies are responsible for collection procedures on all improperly paid items arising under the circumstances described in paragraphs (a) and (b) of § 247.10. However, excepting cases of fraud, an agency should write off a debt and refer it to the FMS for collection if it is not resolved within 90 days after the item was paid. When the FMS collects on the debt, the funds will be returned to the agency minus an administrative fee for the collection, in accordance with rules set forth in I TFM 4-3500. Accountability for a debt remains with the agency in accordance with § 247.10.

(b) The FMS is responsible for collection procedures on all improperly paid items arising under the circumstances described in paragraphs (c) and (d) of § 247.10. With all such items, the FMS will make an initial demand for refund of the amount of a check payment to the presenting bank or any other debtor. This demand shall advise the presenting bank or debtor of the amount demanded and the reason for the demand. All delinquent debts will be subject to interest, penalties and administrative fees in accordance with the Federal Claims Collections Standards. Any discrepancies should be brought to the attention of the FMS.

§ 247.12 Funds for losses.

(a) If collection efforts by the FMS for debts arising under paragraphs (c) and (d) of § 247.10 are unsuccessful, sources of funds for the payment of such losses include FMS appropriations, to the extent available, funds collected from reimbursement fees for services

provided by the FMS pursuant to § 247.5(b), and other available sources.

(b) Reimbursement fees paid by agencies to the FMS for FedSelect check services will be retained for payment of uncollectible losses, consistent with all applicable laws.

§ 247.13 Additional requirements.

In any case or any class of cases arising under these regulations, the FMS or the agency that issued the FedSelect check may require such additional evidence of loss, improper indorsement or entitlement to a replacement as may be necessary for the protection of the interests of the United States.

§ 247.14 Waiver of regulations.

The FMS reserves the right to waive any provision(s) of these regulations in any case or class of cases for the convenience of the United States or in order to relieve any person(s) of unnecessary hardship, if such action is not inconsistent with law, does not impair any existing rights, and the FMS is satisfied that such action will not subject the United States to any substantial expense or liability.

§ 247.15 Supplements, amendments or revisions.

The FMS may, at any time, prescribe supplemental, amendatory, or revised regulations, or revoke the regulations in this part.

Dated: March 16, 1995.

Russell D. Morris,
Commissioner.

[FR Doc. 95-11984 Filed 5-15-95; 8:45 am]

BILLING CODE 4810-35-P

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. 93-2A]

Digital Audio Recording Devices and Media: Access to and Confidentiality of Statements of Account and Verification Audit Filings

AGENCY: Copyright Office, Library of Congress.

ACTION: Interim regulation with request for comments.

SUMMARY: The Copyright Office is issuing an interim regulation to implement portions of the Audio Home Recording Act of 1992. This Act deals with rights with respect to digital audio recording technology (DART) and requires the Register of Copyrights to issue regulations that provide for the

verification, audit, confidential treatment, and appropriate disclosure of DART Statements of Account and any other confidential DART information that is filed with the Copyright Office during a verification procedure.

DATES: This interim regulation is effective June 15, 1995. Public comments on the interim regulation should be received on or before July 17, 1995.

ADDRESSES: Parties must submit fifteen copies of their written comments. If sent by mail, comments must be addressed to: Copyright GC/I&R, P.O. Box 70400, Southwest Station, Washington, DC 20024. If delivered by hand, copies should be brought to: Office of the Copyright General Counsel, James Madison Memorial Building, Room LM-407, First and Independence Avenue, SE, Washington DC 20540.

FOR FURTHER INFORMATION CONTACT: Marilyn J. Kretsinger, Acting General Counsel, Copyright GC/I&R, P.O. Box 70400, Southwest Station, Washington, D.C. 20024. Telephone: (202) 707-8380. Telefax (202) 707-8366.

SUPPLEMENTARY INFORMATION:

I. Background

The Audio Home Recording Act (AHRA) requires parties who manufacture and distribute or import and distribute any digital audio recording devices or media in the United States to file DART Statements of Account and make royalty payments. In separate proceedings, we have already addressed other issues related to the filing of DART Statements of Account. On November 25, 1992, we issued an interim regulation governing the filing of notices of initial distribution under the new DART provisions of the Copyright Code (17 U.S.C. ch. 10). 57 FR 55464 (November 25, 1992). On February 22, 1993, we published an interim regulation on the filing of both quarterly and annual Statements of Account, including payment of royalties. 58 FR 9544 (February 22, 1993). On February 1, 1994, we published a superseding interim regulation establishing requirements governing the filing dates, frequency of filing, and content of the Statements of Account, including the Primary Auditor's Report that must be filed by persons subject to the statutory obligation. 59 FR 4586 (February 1, 1994).

The Act also requires the Register of Copyrights to issue regulations that establish verification and audit procedures, protect the confidentiality of the information contained in DART Statements of Account, and provide for